

AMENDED IN SENATE SEPTEMBER 4, 2001

AMENDED IN SENATE JUNE 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 479**

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**Introduced by Assembly Member Shelley**  
**(Coauthors: Assembly Members Alquist and, Aroner, Chu, and**  
**Koretz)**

February 21, 2001

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An act to amend Sections 2104 and 15604 of the Probate Code, relating to guardians and conservators.

LEGISLATIVE COUNSEL'S DIGEST

AB 479, as amended, Shelley. Guardians: conservators: charitable corporations.

Existing law generally provides that the court has discretion in determining compensation to conservators or guardians of an estate for services rendered; however, if a nonprofit charitable corporation that has been providing care, counseling, or financial advice to the proposed ward or conservatee under the care of a registered social worker is appointed guardian or conservator, the compensation to the corporation, and any fee for an attorney for the corporation, is required to be for services actually rendered and may not be based on the value of the estate. Existing law also permits a nonprofit charitable corporation to be appointed as trustee of a trust under specified conditions, *and permits representation of the corporation by counsel*, but limits compensation to the corporation ~~in that instance~~, *and the fee charged by counsel*, to compensation *or fee* for services actually

rendered and prohibits a court from basing *the* compensation *or fee* on the value of the estate.

This bill would delete these ~~limitations~~ *prohibitions* on basing compensation and fees *upon the value of the estate*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2104 of the Probate Code is amended to  
2 read:

3 2104. (a) A nonprofit charitable corporation may be  
4 appointed as a guardian or conservator of the person or estate, or  
5 both, if all of the following requirements are met:

6 (1) The corporation is incorporated in this state.

7 (2) The articles of incorporation specifically authorize the  
8 corporation to accept appointments as guardian or conservator, as  
9 the case may be.

10 (3) The corporation has been providing, at the time of  
11 appointment, care, counseling, or financial assistance to the  
12 proposed ward or conservatee under the supervision of a registered  
13 social worker certified by the Board of Behavioral Science  
14 Examiners of this state.

15 (b) The petition for appointment of a nonprofit charitable  
16 corporation described in this section as a guardian or conservator  
17 shall include in the caption the name of a responsible corporate  
18 officer who shall act for the corporation for the purposes of this  
19 division. If, for any reason, the officer so named ceases to act as  
20 the responsible corporate officer for the purposes of this division,  
21 the corporation shall file with the court a notice containing (1) the  
22 name of the successor responsible corporate officer and (2) the  
23 date the successor becomes the responsible corporate officer.

24 (c) *If a nonprofit charitable corporation described in this*  
25 *section is appointed as a guardian or conservator:*

26 (1) *The corporation's compensation as guardian or*  
27 *conservator shall be allowed only for services actually rendered.*

28 (2) *Any fee allowed for an attorney for the corporation shall be*  
29 *for services actually rendered.*

30 SEC. 2. Section 15604 of the Probate Code is amended to  
31 read:



1 15604. (a) Notwithstanding any other provision of law, a  
2 nonprofit charitable corporation may be appointed as trustee of a  
3 trust created pursuant to this division, if all of the following  
4 conditions are met:

5 (1) The corporation is incorporated in this state.

6 (2) The articles of incorporation specifically authorize the  
7 corporation to accept appointments as trustee.

8 (3) For the three years prior to the filing of a petition under this  
9 section, the nonprofit charitable corporation has been exempt from  
10 payment of income taxes pursuant to Section 501(c)(3) of the  
11 Internal Revenue Code and has served as a private professional  
12 conservator in the state.

13 (4) The settlor or an existing trustee consents to the  
14 appointment of the nonprofit corporation as trustee or successor  
15 trustee, either in the petition or in a writing signed either before or  
16 after the petition is filed.

17 (5) The court determines the trust to be in the best interest of the  
18 settlor.

19 (6) The court determines that the appointment of the nonprofit  
20 corporation as trustee is in the best interest of the settlor and the  
21 trust estate.

22 (b) A petition for appointment of a nonprofit corporation as  
23 trustee under this section may be filed by any of the following:

24 (1) The settlor or the spouse of the settlor.

25 (2) The nonprofit charitable corporation.

26 (3) An existing trustee.

27 (c) The petition shall include in the caption the name of a  
28 responsible corporate officer who shall act for the corporation for  
29 purposes of this section. If, for any reason, the officer so named  
30 ceases to act as the responsible corporate officer for purposes of  
31 this section, the corporation shall file with the court a notice  
32 containing (1) the name of the successor responsible corporate  
33 officer and (2) the date the successor becomes the responsible  
34 corporate officer.

35 (d) The petition shall request that a trustee be appointed for the  
36 estate, shall specify the name, address, and telephone number of  
37 the proposed trustee and the name, address, and telephone number  
38 of the settlor or proposed settlor, and state the reasons why the  
39 appointment of the trustee is necessary.

(e) The petition shall set forth, so far as the information is known to the petitioner, the names and addresses of all persons entitled to notice of a conservatorship petition, as specified in subdivision (b) of Section 1821.

(f) Notice of the hearing on the petition shall be given in the same manner as provided in Sections 1822 and 1824.

(g) The trustee appointed by the court pursuant to this section shall do all of the following:

(1) File the required bond for the benefit of the trust estate in the same manner provided for conservators of the estate as set forth in Section 2320. This bond may not be waived, but the court may, in its discretion, permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

(2) Comply with the requirements for registration and filing of annual statements pursuant to Article 4 (commencing with Section 2340) of Chapter 4 of Part 4 of Division 4.

(3) File with the court inventories and appraisals of the trust estate and present its accounts of the trust estate in the manner provided for conservators of the estate set forth in Chapter 7 (commencing with Section 2600) of Part 4 of Division 4.

(4) Be reimbursed for expenses and compensated as trustee in the manner provided for conservators of the estate as described in Chapter 8 (commencing with Section 2640) of Part 4 of Division 4. *However, compensation as trustee appointed under this section shall be allowed only for services actually rendered.*

(5) Be represented by counsel in all proceedings before the court. Any fee allowed for an attorney for the nonprofit charitable corporation shall be for services actually rendered ~~and shall not be based on the value of the estate.~~

(h) The trustee appointed by the court under this section may be removed by the court, or may resign in accordance with Chapter 9 (commencing with Section 2650) of Part 4 of Division 4. If the nonprofit charitable corporation resigns or is removed by the court, the settlor may appoint another person as successor trustee, or another nonprofit charitable corporation as trustee under this section.

(i) The trustee appointed by the court under this section is bound by the trust instrument created by the settlor, and shall be

- 1 subject to the duties and responsibilities of a trustee as provided in
- 2 this code.

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